

83-130-2

STATE OF NEW HAMPSHIRE

INTER-DEPARTMENT COMMUNICATION

DATE November 15, 1983

FROM Marc R. Scheer
Assistant Attorney General

AT (OFFICE) Attorney General
Division of Legal Counsel

SUBJECT Unity School District

TO Ms. Lorraine F. Racette, Assistant Director
Municipal Services Division
Department of Revenue Administration
61 South Spring Street
Concord, New Hampshire 03301

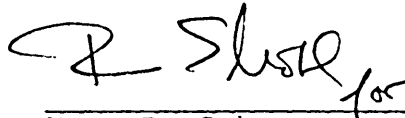
In response to your memorandum dated September 16, 1983, I have reviewed the validity of the May 23, 1983 appropriation by the Unity School District. At that meeting, the district appropriated \$27,572 for special education expenses and \$6,500 for "upgrading education." The special town meeting was held pursuant to an authorization entered into by the superior court on April 11, 1983 "in order to permit the district to comply with its legal obligations to provide funds for special education."

You are concerned that the above-mentioned appropriations were not made in accordance with the law in that the school district did not post a warrant concerning the purpose of the meeting which was sufficiently precise to meet the requirements of RSA 197:5. This case must be viewed in light of the principles of cases such as Baker v. Hudson School District, 110 N.H. 389 (1970), which provide that votes at town meetings should be liberally construed in order to give effect to the plain intent of the voters. Since last discussing this matter with you, I have obtained copies of newspaper articles which were published at the time the controversy over special education arose at the March, 1983 town meeting. These articles clearly establish that the issue of special education was hotly contested by the townspeople and the extent of the coverage indicates that the voters were aware of the purpose for which the appropriation was sought. In this regard, this case is very similar to the case that Fred Laplante and I tried over a year ago relating to the Town of Epping. In that case, the court specifically noted that the effect of the newspaper coverage was to cure any deficiency that may have existed with respect to warning the meeting.

Accordingly, it is my view that the appropriation of \$27,572 at the May, 1983 town meeting, which was specifically authorized by the superior court, substantially complies with

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the requirements of the law. This amount should be considered in setting the Town of Unity's tax rate. However, the appropriation for \$6,500 should not be included for the following reasons. First, you are correct that this particular item was not adequately warned in the town meeting warrant and further, cannot be considered as being within the superior court's authorization as a proper subject for the May, 1983 meeting. I also note that unlike the special education appropriation, the \$6,500 appropriation received little if any publicity and it cannot be fairly stated that the townspeople were fairly apprised of the purpose of that appropriation.



Marc R. Scheer

MRS:ab
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